IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 25138 of 2005(P)

PETITIONER:

KERALA SAMSTHANA VIDESHA MADHYA VYAVASAYA THOZHILALI FEDERATION (CITU),REG.NO.7090 OF 2002 REPRESENTED BY ITS GENERAL SECRETARY K.M.SUDHAKARAN,P.KRISHNA PILLAI BHAVAN,NORTH STATION ROAD,KOCHI-18.

BY ADV. SRI.KOSHY GEORGE

RESPONDENTS:

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1. STATE OF KERALA,REPRESENTED BY THE SECRETARY TAXES (A) DEPARTMENT,SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KERALA STATE BEVERAGES (MANUFACTURING AND MARKETING) CORPORATION LTD., REPRESENTED BY ITS MANAGING DIRECTOR,SASTHAKRIPA OFFICE COMPLEX,SASTHAMANGALAM,THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/12/2006, ALONG WITH WPC NO. 25373 OF 2005 & WPC.NO.28975/05, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.25138/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE MINUTES OF MEETING DTD 14.3.2001

EXT.P2 COPY OF MINUTES OF MEETING AND MEMORANDUM OF AGREEMENT.

EXT.P3 COPY OF ORDER DTD 16.7.2005 BY R1.

EXT.P4 COPY OF LETTER DTD 18.8.05 BY R2.

/TRUE COPY/

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K. THANKAPPAN, J.

W.P.(C).Nos.25138,25373 & 28975 OF 2005

Dated this the 21st day of December, 2006.

J U D G M E N T

The first two writ petitions are filed by the two trade unions namely, the Kerala Samsthana Videsha Madhya Vyavasaya Thozhilali Federation (CITU) represented by its General Secretary and the Madhya Videsha Madhya Vyavasaya Thozhilali Fedration represented by its President. The third writ petition is filed by one Smt. Rajani A, who is the wife of one deceased abkari worker named Ajimon. This writ petition is for seeking employment assistance in the dying in harness scheme.

2. In these writ petitions, State of Kerala as well as the Kerala State Beverages (M&M) Corporation Limited are the respondents. The common prayer sought in the first two writ petitions is to quash the order No.34618/A3/04 dated 16.7.2005 of the taxes department of the State Government. It is further prayed to direct the respondents to appoint all the legal heirs or dependents of all abkari workers, who

died in harness in the vacancies arising in the 2nd respondent Corporation and F.L shops owned by the Corporation. There is an additional prayer in W.P.(C)No.28975/2005 to the effect that to declare sub rule (37) of Rule 7 of the Kerala Abkari Shops Disposal Rules as ultravires to the Constitution of India and the provisions of the Abkari Act as it is discriminatory on the ground of sex. The main score of attack against the order dated 16.7.2005 is that the order is discriminatory as it excludes the benefit of getting appointment to the women applicants in the 2nd respondent Corporation.

3. This Court heard the learned counsel appearing for the petitioner, the 2nd respondent Corporation as well as the learned Government Pleader. When in an earlier occasion these writ petitions came up for hearing, this Court directed the Government Pleader to file a statement with regard to the stand of the Government in the light of the challenge raised against the order dated 16.7.2005, a copy of which is marked as Ext.P8 in W.P.(C).No.28975/2005. In pursuance to the above direction, a statement has been filed for and on behalf

of the State in which it is stated that one Sathimani Gopalakrishnan, wife of one P.N.Gopalakrishnan, who died on 11.10.2000 while serving as an abkari worker, working in FL-1/90 at Thodupuzha, has been given appointment under the dying in harness scheme. That order is also produced by the petitioner in W.P.(C)No.28975/2005 as Ext.P11. A reading of the above order would show that order dated 16.7.2005 is not a bar for giving appointment to Smt. Sathimony Gopalakrishnan. If so, non-consideration of the applications of other applicants by the 2nd respondent is discriminatory. The counsel appearing for the petitioners in W.P.(C) Nos.25138/05 and 25373/05 placing reliance on the same order passed by the Government giving employment to Smt. Sathimani Gopalakrishnan and contended that order dated 16.7.2005 has to be quashed. In the light of the above order passed by the Government, the learned counsel appearing for the petitioners submits that Ext.P8 order dated 16.7.2005 has no legal stand. Hence, it has to be quashed by this Court.

4. Considering the present position, this Court need not

consider the special prayer in W.P.(C)No.28975/2005 to declare sub rule (37) of Rule 7 of the Kerala Shops and Abkari disposal Rule as ultravires but, at the same time, this Court is compelled to hold that in the light of the order issued by the State Government giving appointment to Sathimani Gopalakrishnan it has to be declared that Ext.P8 namely order dated 16.7.2005 has no legal stand. In the light of the above declaration, respondents 1 and 2 are directed to take immediate steps to consider all the applications filed under the dying in harness scheme and to give appointment to the applicants on the basis of their seniority. The applications which are received under the dying in harness scheme by the 2nd respondent shall be considered as per the directions issued by this Court as early as possible and at any rate within three months from the date of receipt of a copy of this judgment

With the above directions, all these writ petitions are disposed of.

K. THANKAPPAN, JUDGE.

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